

**§ 150.40 When do I have investment discretion?**

(a) *General.* You have investment discretion when you have, with respect to a fiduciary account, the sole or shared authority to determine what securities or other assets to purchase or sell on behalf of that account. It does not matter whether you have exercised this authority.

(b) *Delegations.* You retain investment discretion if you delegate investment discretion to another. You also have investment discretion if you receive delegated authority to exercise investment discretion from another.

**§ 150.50 What is a fiduciary account?**

A fiduciary account is an account that you administer acting in a fiduciary capacity.

**§ 150.60 What other definitions apply to this part?**

*Activities ancillary to your fiduciary business* include advertising, marketing, or soliciting fiduciary business, contacting existing or potential customers, answering questions and providing information to customers related to their accounts, acting as liaison between you and your customer (for example, forwarding requests for distribution, changes in investment objectives, forms, or funds received from the customer), and inspecting or maintaining custody of fiduciary assets or holding title to real property. This list is illustrative and not comprehensive. Other activities may also be “ancillary activities” for purposes of this definition.

*Affiliate* has the same meaning as in 12 U.S.C. 221a(b). For purposes of this part, substitute the term “Federal savings association” for the term “member bank” whenever it appears in 12 U.S.C. 221a(b).

*Applicable law* means the law of a state or other jurisdiction governing your fiduciary relationships, any Federal law governing those relationships, the terms of the instrument governing a fiduciary relationship, and any court order pertaining to the relationship.

*Fiduciary activities* include accepting a fiduciary appointment, executing fiduciary-related documents, providing investment advice for a fee regarding

fiduciary assets, or making discretionary decisions regarding investment or distribution of assets.

*Fiduciary officers and employees* means the officers and employees of a Federal savings association to whom the board of directors or its designee has assigned functions involving the exercise of the association’s fiduciary powers.

**Subpart A—Obtaining Fiduciary Powers****§ 150.70 Must I obtain OCC approval or file a notice before I exercise fiduciary powers?**

Except for fiduciary activities subject solely to subpart E, you should refer to 12 CFR 5.26 to determine if you must obtain OCC approval or file a notice with the OCC before you exercise fiduciary powers. A Federal savings association may not exercise fiduciary powers unless it obtains prior approval from the OCC to the extent required under 12 CFR 5.26.

[80 FR 28480, May 18, 2015]

**Subpart B—Exercising Fiduciary Powers****§ 150.130 How may I conduct multi-state operations?**

(a) *Conducting fiduciary activities in more than one state.* You may conduct fiduciary activities in any state, subject to the application and notice requirements in § 5.26 of this chapter.

(b) *Serving customers in more than one state.* When you conduct fiduciary activities in a state:

(1) You may market your fiduciary services to, and act as a fiduciary for, customers located in any state, may act as a fiduciary for relationships that include property located in other states, and may act as a testamentary trustee for a testator located in other states.

(2) You may establish or utilize an office in any state to perform activities that are ancillary to your fiduciary business.

[76 FR 49003, Aug. 9, 2011, as amended at 80 FR 28480, May 18, 2015]